

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
W.R. GRACE & CO., et al.,	)	Case No. 01-1139(JKF)
	)	
Debtors.	)	Jointly Administered
	)	

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**ARROWOOD'S COUNTER DESIGNATIONS AND OBJECTIONS TO  
BNSF RAILWAY COMPANY'S CONFIDENTIAL INITIAL DEPOSITION  
DESIGNATIONS OF TESTIMONY OF JEFFERY POSNER, RICHARD FINKE, JAY  
HUGHES, AND PETER VAN N. LOCKWOOD**

**EXHIBIT C**

Dated: August 20, 2009  
New York, New York

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Deposition Designation Key:

AR = ARROWOOD  
OBJ = OBJECTION  
CDC = COUNTER DESIGNATION FOR COMPLETENESS  
R = RELEVANCE  
BE = BEST EVIDENCE  
CLC = CALLS FOR LEGAL CONCLUSION  
IH = INCOMPLETE HYPOTHETICAL

LF = LACKS FOUNDATION  
CFS = CALLS FOR SPECULATION  
S = SPECULATIVE  
H = HEARSAY  
LPK = LACKS PERSONAL KNOWLEDGE  
AFNE = ASSUME FACT NOT IN EVIDENCE

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In Re: *W.R. Grace & Co.* : Chapter 11  
:   
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
:   
: (Jointly  
Debtors : Administered)

- - -

Friday, May 1, 2009

- - -

Oral deposition of PETER VAN  
N. LOCKWOOD, ESQUIRE, taken pursuant to  
notice, was held at the offices of CAPLIN  
& DRYSDALE, One Thomas Circle N.W., Suite  
1100, Washington, DC 20005, commencing  
at 9:43 a.m., on the above date, before  
Lori A. Zabielski, a Registered  
Professional Reporter and Notary Public  
in and for the Commonwealth of  
Pennsylvania.

- - -

MAGNA LEGAL SERVICES  
Seven Penn Center  
1635 Market Street  
8th Floor  
Philadelphia, Pennsylvania 19103

1 form.

2 THE WITNESS:

3 Hypothetically, probably yes. It  
4 would be more difficult, but,  
5 hypothetically, yes. You could  
6 have -- we have had some plans  
7 that had coverage in place  
8 agreements with insurers, for  
9 example, that we felt satisfied  
10 524(g). But you have to get the  
11 insurers' agreement to have a  
12 coverage in place agreement.

13 BY MR. BROWN:

14 Q. Okay. Let's go now to  
15 condition (r) -- I am sorry. Condition  
16 (s).

17 A. Yes.

18 Q. Now, for purposes of my  
19 question, I want you to assume that when  
20 I use the term "settled asbestos  
21 insurance companies," I want you to  
22 assume that those that are pre-petition.

23 A. Okay.

24 Q. And my question is a very

1 general one, because I have heard  
2 different views, and that is, what  
3 benefits are being provided by or on  
4 behalf of settled asbestos insurance  
5 companies listed on Exhibit-5?

6 A. It is the position of the  
7 ACC that Grace is paying close to  
8 \$3 billion of value to the Trust on  
9 behalf of not only itself but a variety  
10 of other protected parties, including  
11 Non-Debtor affiliates and, in this  
12 particular case, settled asbestos  
13 insurers.

14 And it is doing so on behalf  
15 of settled asbestos insurers because  
16 those insurers have indemnity claims  
17 against Grace, which are being, if they  
18 hypothetically could ever occur, are  
19 being channelled to the Trust as a means  
20 of protecting Grace against such -- well,  
21 let me back up.

22 The purpose of putting  
23 settled asbestos insurers in here is not  
24 to provide a gratuitous asbestos insurers



1 because we think they are nice folks.

2 Q. I didn't think so.

3 A. Settled asbestos insurers,  
4 by definition, are insurers that have  
5 indemnity rights against Grace.

6 Q. They have also paid a lot of  
7 money?

8 A. And they paid a lot of money  
9 in the past. But the past money -- money  
10 is fungible. The past money went into  
11 Grace's coffers, went out or didn't go  
12 out, et cetera. But they are not being  
13 asked for any new money.

14 But Grace has an economic  
15 interest in not having asbestos PI claims  
16 brought against those insurers that could  
17 then trigger an indemnity obligation of  
18 Grace to the insurer against which that  
19 asbestos PI claim was asserted. They  
20 have an economic interest in preventing  
21 that.

22 So the deal is channel any  
23 such claim that might give rise to the  
24 asbestos indemnity claim to the Trust,

1 and in exchange for that, part of what  
2 Grace is paying you is to get rid of  
3 asbestos PI claims which include indirect  
4 asbestos PI claims for indemnity or  
5 direct asbestos PI claims for indemnity.

6 Q. Okay.

7 A. And that's the basis.

8 Q. I think you said at the very  
9 beginning of either the last question or  
10 the one before that Grace was  
11 contributing 3 million?

12 A. Billion.

13 Q. That's what I thought.

14 Okay. I just wanted to make sure I had  
15 the number correct.

16 A. I mean, that's our view of  
17 the approximate amount of what they were  
18 contributing at the time we made the  
19 deal, I guess would be a better way to  
20 put it. There are other people that  
21 might value it differently.

22 Some of things that were  
23 worth more at the time the deal was made  
24 are worth less today but hopefully will

1 what the scope of the injunction is  
2 that's in your client's Plan.

3 A. I described, I thought, in  
4 some detail what I thought the scope of  
5 the injunction is. But if you want to  
6 turn to the injunction provisions and ask  
7 me specific questions about their scope,  
8 I am sure you will do that.

9 Q. We will get to the  
10 injunction.

11 A. I am sure you will do that.

12 Q. Does this language that we  
13 are referring to here under 7.13 the  
14 underscored language release claims that  
15 BNSF or the Libby claimants might have or  
16 might choose to assert against settled  
17 asbestos insurance companies?

18 MR. FINCH: Objection to  
19 form, calls for legal conclusion.

20 MS. HARDING: Same  
21 objection.

22 THE WITNESS: I think those  
23 are the same. Those claims are  
24 channelled to the Trust, and I



1 don't believe the intendment of  
2 this paragraph is to sort of mean  
3 that the claims vanish, if that's  
4 what you mean by release.

5 What I believe the  
6 intendment of this claim is is  
7 that this provision is that it's  
8 sort of a belt-and-suspenders  
9 piece of channelling injunction.

10 BY MR. BROWN:

11 Q. So the claims are both  
12 enjoined, channelled, and then released?

13 A. Against the  
14 asbestos-protected parties but not  
15 against the Trust, for example.

16 What I can't tell from your  
17 question is whether you are sort of  
18 insinuating that somehow or another the  
19 release has the effect of freeing the  
20 Trust from liability for these claims,  
21 which I don't believe it does.

22 Q. What's the consideration for  
23 the release insofar as it pertains to the  
24 Sealed Air indemnified parties and the

1                   If that's true -- but it  
2     still has to arise -- Scotts has to have  
3     been negligent in, if you will,  
4     re-selling a Grace product, and so the  
5     underlying exposure would be to the Grace  
6     product.

7                   As the Plan is drafted, if  
8     you look at the definition of asbestos  
9     personal injury claim and sort of trace  
10    that through to what winds up going into  
11    the Trust, it would not cut off the fact  
12    that somebody who was selling a Grace  
13    product had some sort of additional basis  
14    for the liability of that product. They  
15    were being sued as a result.

16                  So the answer is that,  
17    unless the court says that claim cannot  
18    be channelled to the Trust, it is  
19    channelled to the Trust.

20                  Q.     Okay. Let's go to Section  
21    8.25, Asbestos PI Channelling Injunction.

22                  A.     I have it.

23                  Q.     I am sorry. I am just  
24    looking at my notes here.

1 I am correct, am I not, that  
2 the asbestos PI channelling injunction,  
3 among other claims, enjoins any claims  
4 that BNSF has against settled asbestos  
5 insurance companies that arise from  
6 asbestos PI claims?

7 A. Generally stated, I believe  
8 that to be correct.

9 Q. Are there any exceptions  
10 about when you are aware?

11 A. Again, I would have to parse  
12 the definitions to see whether there  
13 might be some hypothetical possibility of  
14 a claim that wouldn't be covered. But to  
15 the extent that BNSF is asserting against  
16 settled insurers claims that are based on  
17 asbestos-related injuries arising from  
18 Grace vermiculite that somehow or another  
19 BNSF was involved with and held liable  
20 for, those claims are channelled to the  
21 Trust.

22 Q. Okay. And are the claims  
23 that the Libby claimants have asserted or  
24 could assert against the settled asbestos

AR's  
OBJ:  
CDC